AMINAH AHMAD v. ALI MOKHTAR HJ ABDUL RAHMAN

HIGH COURT MALAYA, PULAU PINANG
NORDIN HASSAN JC
[ORIGINATING SUMMONS NO: 24NCVC-534-06-2014]
21 JULY 2014

MENTAL DISORDERS AND TREATMENT: *Inquiry – Medical reports – Whether showed that subject mentally disordered and incapable of managing himself and his affairs – Whether applicant made application for inquiry by court under s. 52(1) of Mental Health Act 2001 – Whether court could appoint committee in absence of finding that subject was mentally disordered person – Mental Health Act 2001, ss. 52(3), 56 & 58*

WORDS & PHRASES: *'Mentally disordered person' – Meaning of – Mental Health Act 2001, s. 51 – Any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs*

The applicant, the respondents/defendant's wife, applied for orders pursuant to ss. 52(3) and 58(1) of the Mental Health Act 2001 ('the Act'), *inter alia*: (i) that she be appointed committee of the person and estate of the respondent; (ii) that the committee be empowered to institute proceedings for compensation on behalf of the respondent in relation to the injury suffered by the respondent due to a motor vehicle accident; and (iii) that the committee be empowered to receive any monies awarded from the said proceedings and the monies to be used for the respondent's benefit. In her affidavit in support of the application, the applicant deposed that the respondent suffered serious head injuries in a motor vehicle accident and was therefore incapable of managing himself.

Held (dismissing application):

(1) The medical reports from Taiping Hospital and Bukit Mertajam Hospital confirmed that the respondent suffered head injuries and based on the report from the Penang Adventist Hospital, the respondent was found to be suffering from dementia or severe impairment or loss of intellectual capacity and personal integration due to loss of or damage to neurons in the brain. However, neither report made a finding that the respondent was mentally disordered and incapable of managing himself and his affairs. (paras 4 & 5)

(2) 'Mentally disordered person' means any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs. In the context of the present case, the procedures laid down in Part X which includes ss. 51 to 58 of the Act is the due course of law to be complied with before a person can be found to be a mentally disordered person. The court has to make a finding that the person to

A be mentally disordered and incapable of managing himself and affairs before the court can exercise its discretion under s. 58 to appoint a committee or committees, for the person and his estate. (paras 15 & 16)

(3) The applicant had not made any application under s. 52(3) for the court to order an inquiry under s. 52(1) and thereafter to make a finding B whether the respondent was incapable of managing himself and his affairs due to his mental disorder as provided under s. 56 of the Act. As such, there was no finding by due course of law that the respondent was a mentally disordered person and incapable of managing himself and his affairs. In the circumstances, the court was unable to appoint any C committee or committees for the respondent and his estate. (paras 19 & 20)

Case(s) referred to:

Pasaraya Seri Sayang Sdn Bhd v. Majlis Pulau Pinang [1988] 2 CLJ 99; [1988] 2 CLJ (Rep) 107 HC ***(refd)***

D *Tan Guek Tin & Anor v. Tan Kim Kiat [2007] 8 CLJ 215 HC* ***(refd)***

Legislation referred to:

Mental Health Act 2001, ss. 2, 51, 52(1), (3), 53, 54, 55(1), 56, 57, 58(1)

For the appellant - Eric Chang; M/s Eric Chang & Co
For the respondent - Unrepresented

E

Reported by S Barathi

JUDGMENT

Nordin Hassan JC:

F

The Application

[1] Enclosure (1) is an *ex parte* application for the following orders in relation to the respondent and his estate pursuant to ss. 52(3) and 58(1) of the Mental Health Act 2001:

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(i) That Aminah binti Ahmad be appointed committee of the person and estate of Ali Mokhtar bin Haji Abdul Rahman ('the respondent');

(ii) That the committee be empowered to institute proceeding for compensation on behalf of the respondent in relation to the injury suffered H by the respondent due to the motor vehicle accident on 7 September 2009;

(iii) That the committee be empowered to receive any monies awarded from the said proceeding and the monies to be used for the respondent's benefit; and

I

(iv) Any other relief that the court deems fit.

[2] The application is supported by the affidavit of Aminah binti Ahmad, the applicant and wife of the respondent. In her affidavit in encl. (2), in essence, the applicant deposes that on 7 September 2009, the respondent had involved in motor vehicle accident and suffered serious head injury. Due to this injury the respondent is said to be incapable of managing himself.

[3] In encl. 2, the applicant exhibited three medical reports of the respondent which are as follows:

(i) Medical report from Dr Lim Siew Fuen of the Bukit Mertajam Hospital dated 20 October 2009;

(ii) Medical report from Dr Ng Vi Vien of the Taiping Hospital dated 2 December 2012.

(iii) Medical report from Dr Prem Kumar Chandrasekaran of the Penang Adventist Hospital dated 30 September 2013.

[4] The medical reports from Taiping and Bukit Mertajam Hospitals confirmed that the respondent suffered head injury. Beside that, Dr Prem Kumar of the Penang Adventist Hospital who examined the respondent found him to be suffering from dementia or severe impairment or loss of intellectual capacity and personal integration due to loss of or damage to neuron in the brain.

[5] It is pertinent to note here that neither of the three doctors who examined the respondent make a finding that the respondent was mentally disordered and incapable of managing himself and his affairs.

The Law

[6] Section 2 of the Mental Health Act 2001 (Act 615) ('the Act') defines 'mental disorder' as:

> 'Mentally disordered' means any mental illness, arrested or incomplete development of mind, psychiatric disorder, or any other disorder or disability of the mind however acquired; and 'mentally disordered shall be conspired accordingly'.

Section 51 of the act defines 'mentally disordered person' as follows:

> 'Mentally disordered person' means any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs.

[7] The procedure and powers to make an order for an inquiry to determine whether a person alleged to be mentally disordered and incapable of managing himself and his affairs are clearly provided under ss. 52 and 53 of the Act.

[8] Apart from these provisions, s. 58 of the act provides the power for the court to appoint committee or committees of a person or estate of the person. The provision is as follows:

A Section 58

(1) **If the Court finds** that the persons who is alleged to be mentally disordered is incapable of managing himself and his affairs due to his mental disorder, the Court **may appoint a committee or committees** of the person and of the estate of the person and my,
B a the court deem fit, make an order:

(a) as to the remuneration if any, of the committee or committees out of the person's estate.

(b) as to the giving of security by the committee or committees

C (2) Where the Court find that the person alleged to be mentally disordered is incapable of managing his affairs due to his mental disorder but is not dangerous to himself or to others, the Court **may appoint a committee** of his estate without appointing a committee of his person.

D **Analysis Of Facts And Law**

[9] From the provision of s. 58(1) above, it is clear that the court has to make a finding as to whether the person who is alleged to be mentally disordered is incapable of managing himself and his affairs before the court may exercise its discretion to appoint a committee or committees of the person and of his estate.

E **[10]** In the present case, there is no finding of the court that the respondent is incapable of managing himself and his affairs. In the first place there is no application by the applicant for the court to make such finding. Even in encl. (1) the orders sought by the applicant does not include the order for the court to make such finding.

F **[11]** The procedures as laid down in the act for an order to appoint committee or committees of a person and of his estate is clear. It begins with the application for an inquiry to determine whether the person is incapable of managing himself and his affairs as provided under s. 52:

G Section 52:

(1) The Court may on an application made before it, make an order directing an inquiry to determine whether person subject to the jurisdiction of the court and alleged to be mentally disordered is incapable of managing himself and his affairs due to such mental disorder.

H (2) ...

(3) The application for such an inquiry may be made by a relative of the person alleged to be mentally disordered.

Under s. 2 of the Act, relative includes the wife.

I **[12]** Pursuant to an application for an inquiry under s. 52(3) of the Act, the court may personally examine the person alleged to be mentally disordered or for him to be examined by psychiatrist appointed by the court. This is provided under s. 54 of the Act.

[13] The court then, under s. 55(1) may send the person to a government psychiatric hospital or gazetted private psychiatric hospital for the purpose of observation.

[14] Thereafter, after receiving the report from the psychiatrist under s. 54 or the certification of the Medical Director under s. 55 and upon hearing evidence and arguments whenever necessary, then only the court may decide whether the persons alleged to be mentally disordered due to his mental disorder is incapable of managing himself and his affairs. This is clearly provided under s. 56 of the Act:

> Section 56
>
> At the inquiry after receiving the report under section 54 or the certification of the Medical Director under section 55 and upon hearing such evidence and arguments as it may think fit, the Court shall decide whether the person alleged to be mentally disordered is, due to his mental disorder, incapable of managing himself and his affairs, and shall also decide any other questions a to which an inquiry has been directed

[15] As stated earlier, 'mentally disordered person' means any person found by due course of law to be mentally disordered and incapable of managing himself and his affairs.

[16] In the context of present case, the procedures laid down in Part X which includes ss. 51 to 58 of the Act is the due course of law to be complied with before a person can be found to be a mentally disordered person. The court has to make a finding that the person to be mentally disordered and incapable of managing himself and affairs before the court can exercise its discretion under s. 58 to appoint a committee or committees, for the person and his estate.

[17] In the case of *Pasaraya Seri Sayang Sdn Bhd v. Majlis Pulau Pinang* [1988] 2 CLJ 99; [1988] 2 CLJ (Rep) 107; [1988] 3 MLJ 51 at p. 54, the words 'due course of law' succinctly explained as follows:

> What this expression '**in due course of law**' means is explained in *Pollock and Mulla* (*supra*) at p. 816:
>
> > The words 'due course of law' are not merely equivalent to the word 'legally' for thing which is perfect by legal may still by no means a thing done 'in due course of law'. The expression 'due course of law' means the regular, normal process and the effect of the law operating on the matter which has been laid before it for adjudication ...

[18] Here the process and the effect of the law which has been laid to determine a mentally disordered person and thereafter for the appointment of committee or committees as mentioned earlier are clearly provided in Part X ss. 51 to 58 of the Mental Health Act 2001.

[19] Turning to the present case, the applicant has not made any application under s. 52(3) for this court to order an inquiry under s. 52(1) and thereafter to make a finding whether the respondent is incapable of managing himself and his affairs due to his mental disorder as provided under s. 56 of the Act.

[20] As such, there is no finding by due course of law that respondent is a mentally disordered person and incapable of managing himself and his affair. Therefore this court is unable to appoint any committee or committees for the respondent and his estate.

[21] This court is empowered to appoint a committee of the respondent and of his estate once it is satisfied that the respondent is incapable of managing himself and his affairs. This is clearly stated in the case of *Tan Guek Tin & Anor v. Tan Kim Kiat* [2007] 8 CLJ 215 at p. 232; [2007] 3 MLJ 521 at p. 533 where Abdul Malik Ishak J (as he then was) explained:

> ... Once I am satisfied that the defendant is incapable of managing himself and his affairs due to this mental disorder, I am then empowered to appoint 'a committee of the person and of the estate' of the defendant ...

Conclusion

[22] Here, based on the materials available before me, I am not satisfied that the respondent is incapable of managing himself and his affairs due to his mental disorder.

[23] For the above reasons, application in encl. (1) for the applicant to be appointed as a committee under s. 58(1) of the Act was dismissed.